SERIAL 10077   SS   PATHLORE LMS LICENSES MAINTENANCE & SUPPORT

DATE OF LAST REVISION: January 20, 2011   CONTRACT END DATE: September 14, 2013

CONTRACT PERIOD BEGINNING SEPTEMBER 15, 2010
ENDING SEPTEMBER 14, 2013

TO: All Departments

FROM: Department of Materials Management

SUBJECT: Contract for **PATHLORE LMS LICENSES MAINTENANCE & SUPPORT**

Attached to this letter is a listing of vendors available to Maricopa County Agencies utilizing the Recorder Agreement C-36-10-004-3-00. The using agency and other interested parties may access and electronic version of this contract from the Materials Management Web site at: http://www.maricopa.gov/materials/Awarded_Contracts/search.asp.

Please note: Price Agreement Purchase Orders (PG documents) may be generated using the information from this list. Use NIGP CODE 2096401.

All purchases of product(s) listed on the attached pages of this letter are to be obtained from the listed contractor(s).

SOLE SOURCE CONTRACT

C·41·11·002·3·00   **SERIAL** 10077-SS

This Contract is entered into the 15th day of September 2010 by and between Maricopa County (County), a political subdivision of the State of Arizona, and SumTotal Systems, a California corporation (Contractor) for the purchase of software support and maintenance of the Pathlore LMS solution.

This Contract replaces and supersedes any previous agreement regarding the purchase and use of the Software licensed hereunder. The Contractor has previously licensed the Software to the County and provided to certain services regarding same. The County has purchased 14,500 seats of LMS Enterprise, 2,000 seats of Skills Management Systems, and 20,000 seats of SDK (XLMS), are hereby subject to all the terms and conditions of this Contract, as are any licenses subsequently purchased directly from Contractor..,

As of the effective date of this Contract, shall supersede any previous executed license agreements for such Software by and between Contractor and the County.

1.0   TERM:

    1.1   This Contract is for a term of three (3) years, beginning on the 15th day of September, 2010 and ending the 14th day of September, 2013.

    1.2   Upon expiration of the then Current Contract Term, a new Term shall automatically begin for a consecutive 12-month period; provided that (i) you have not given us written notice that you do not wish to extend the Maintenance Term for an additional 12 months at least 30 days prior to the end of the current term; and (ii) we still offer maintenance for the Software. We will provide you with written notice of the upcoming expiration date, which shall include notice of any price increase for the upcoming Maintenance Term, if applicable. The failure to renew maintenance shall not affect your licenses to the Software.

2.0   INVOICES AND PAYMENTS:

    2.1   The Contractor shall submit two (2) legible copies of their detailed invoice before payment(s) can be made. At a minimum, the invoice must provide the following information:

        • Company name, address and contact
        • County bill-to name and contact information
        • Contract Serial Number
        • County purchase order number

- Invoice number and date
- Payment terms
- Date(s) of service
- Contract Item number(s)
- Description of services
- Pricing per unit of service
- Extended price
- Total Amount Due

2.2   Problems regarding billing or invoicing shall be directed to the using agency as listed on the Purchase Order.

2.3   Payment shall be made to the Respondent by Accounts Payable through the Maricopa County Vendor Express Payment Program. This is an Electronic Funds Transfer (EFT) process. After Award the Respondent may fill-out an EFT Enrollment form located on the Maricopa County Department of Finance Website as a fillable PDF document (www.maricopa.gov/finance/).

2.4   EFT payments to the routing and account numbers designated by the Respondent will include the details on the specific invoices that the payment covers. The Respondent is required to discuss remittance delivery capabilities with their designated financial institution for access to those details.

3.0   TAX: (SERVICES)

No tax shall be levied against labor. It is the responsibility of the Contractor to determine any and all taxes and include the same in proposal price.

4.0   TAX: (COMMODITIES)

Tax shall not be levied against labor. Sales/use tax will be determined by County.

5.0   POST AWARD MEETING:

The Contractor may be required to attend a post-award meeting with the Using Agency to discuss the terms and conditions of the Contract. This meeting will be coordinated by the Procurement Officer of the Contract.

6.0   TERMS & CONDITIONS:

6.1   INDEMNIFICATION:

6.1.1   Claims Related to Software or Service Deliverables. Provided that you comply with the procedures set forth in Section 6.1.5 and subject to Section 6.1.2, we will, at our expense and under our control (including selection of counsel), defend and/or settle any claim, suit or proceeding brought by a third party against you or your officers, directors, employees, agents and affiliates alleging that the Software, or any Service Deliverable, as provided by us, infringes any copyright, trademark, trade secret or U.S. patent issued as of the Effective Date ("Claim"). In addition, we will pay any judgment awarded against you for such Claim or any settlement amount agreed to by us and, subject to Section 6.1.5, any authorized and documented expenses incurred by you.

6.1.2   Exclusions. We will have no obligation under Section 6.1.1 with respect to any Claim arising out of or based upon (i) your modification of the Software, or Service Deliverables or its combination or use with programs not supplied by us or its use in a manner not permitted by this Agreement, where such modification, combination or use gives rise to such Claim; (ii) use of the Software, or Service Deliverables that is not in accordance with the terms of this Agreement; (iii) your use, reproduction or distribution of other than the most recent version of the Software, or Service Deliverables provided by us or available to you where such infringement would have been avoided by your use, reproduction or distribution of the most recent version of the Software, or

Service Deliverables; or (iv) *Customer Materials* used with or incorporated in the *Software*, or a *Service Deliverables*.

6.1.3 Injunction. If your use of the *Software*, or *Service Deliverables* is or, in our determination, is likely to be enjoined, we may, without limiting our indemnity obligations hereunder, procure the right for you to continue to use the *Software*, or *Service Deliverables* or modify the *Software*, or *Service Deliverables* in a manner that has materially equivalent functionality so as to avoid such injunction. If the foregoing options are not available on commercially reasonable terms and conditions, we may require the return of any such *Software*, or *Service Deliverables* and refund to you amounts paid for such *Software*, or *Service Deliverables* less a credit for use based on straight line depreciation applied on a quarterly basis over five years from the date of initial delivery of the *Software* or a *Service Deliverables*.

6.1.4 Claims Related to Customer Material. Provided that we comply with the procedures set forth in Section 6.1.5, you will, at your expense, defend and/or settle any claim, suit or proceeding brought by a third party against us or our officers, directors, employees, agents and affiliates and arising out of or related to the *Customer Materials* (either alone or as incorporated into a *Service Deliverables*). In addition, you will pay any judgment awarded against us or any settlement amount agreed to by you and, subject to Section 6.1.5, any authorized expenses incurred by us.

6.1.5 Procedure. If one party (the "Indemnitee") receives any notice of a claim or other allegation with respect to which the other party (the "Indemnitor") has an obligation of indemnity hereunder, then the Indemnitee will in order to qualify for Indemnification under this Section, within 15 days of receipt of such notice, give the Indemnitor written notice, pursuant to the Notices provision set forth in Section 6.1.6 of this Agreement, of such claim or allegation setting forth in reasonable detail the facts and circumstances surrounding the claim. The Indemnitee will not make any payment or incur any costs or expenses with respect to such claim, except as requested by the Indemnitor or as necessary to comply with this procedure. The Indemnitee will not make any admission of liability or take any other action that limits the ability of the Indemnitor to defend the claim. The Indemnitor shall immediately assume the full control of the defense or settlement of such claim or allegation, including the selection and employment of counsel, and shall pay all authorized and documented costs and expenses of such defense. The Indemnitee will fully cooperate, at the expense of the Indemnitor, in the defense or settlement of the claim. The Indemnitee shall have the right, at its own expense, to employ separate counsel and participate in the defense or settlement of the claim. The Indemnitor shall have no liability for costs or expenses incurred by the Indemnitee, except to the extent authorized by the Indemnitor or pursuant to this procedure.

6.1.6 Exclusive Remedies. THE INDEMNITY AND OTHER REMEDIES SET FORTH IN THIS SECTION 8 SHALL BE THE SOLE LIABILITY AND EXCLUSIVE REMEDIES OF THE PARTIES WITH RESPECT TO ANY ACTUAL OR ALLEGED INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS.

6.2   INSURANCE REQUIREMENTS:
Contractor, at Contactor's own expense, shall purchase and maintain the herein stipulated minimum insurance from a company or companies duly licensed by the State of Arizona and possessing a current A.M. Best, Inc. rating of B++6. In lieu of State of Arizona licensing, the stipulated insurance may be purchased from a company or companies, which are authorized to do business in the State of Arizona, provided that said insurance companies meet the approval of County. The form of any insurance policies and forms must be acceptable to County. All insurance required herein shall be maintained in full force and effect until all work or service required to be performed under the terms of the Contract is satisfactorily completed and formally accepted. Failure to do so may, at the sole discretion of County, constitute a material breach of this Contract.

Contractor's insurance shall be primary insurance as respects County, and any insurance or self-insurance maintained by County shall not contribute to it.

Any failure to comply with the claim reporting provisions of the insurance policies or any breach of an insurance policy warranty shall not affect the County's right to coverage afforded under the insurance policies.

The insurance policies may provide coverage that contains deductibles or self-insured retentions. Such deductible and/or self-insured retentions shall not be applicable with respect to the coverage provided to County under such policies. Contactor shall be solely responsible for the deductible and/or self-insured retention and County, at its option, may require Contractor to secure payment of such deductibles or self-insured retentions by a surety bond or an irrevocable and unconditional letter of credit.

County reserves the right to request and to receive, within 10 working days, certified copies of any or all of the herein required insurance policies and/or endorsements. County shall not be obligated, however, to review such policies and/or endorsements or to advise Contractor of any deficiencies in such policies and endorsements, and such receipt shall not relieve Contractor from, or be deemed a waiver of County's right to insist on strict fulfillment of Contractor's obligations under this Contract.

The insurance policies required by this Contract, except Workers' Compensation, and Errors and Omissions, shall name County, its agents, representatives, officers, directors, officials and employees as Additional Insureds.

The policies required hereunder, except Workers' Compensation, and Errors and Omissions, shall contain a waiver of transfer of rights of recovery (subrogation) against County, its agents, representatives, officers, directors, officials and employees for any claims arising out of Contractor's work or service.

6.2.1   Commercial General Liability:

Commercial General Liability insurance and, if necessary, Commercial Umbrella insurance with a limit of not less than $1,000,000 for each occurrence, $2,000,000 Products/Completed Operations Aggregate, and $2,000,000 General Aggregate Limit. The policy shall include coverage for bodily injury, broad form property damage, personal injury, products and completed operations and blanket contractual coverage, and shall not contain any provision which would serve to limit third party action over claims. There shall be no endorsement or modification of the CGL limiting the scope of coverage for liability arising from explosion, collapse, or underground property damage.

6.2.2   Automobile Liability:

Commercial/Business Automobile Liability insurance and, if necessary, Commercial Umbrella insurance with a combined single limit for bodily injury and property damage of not less than $1,000,000 each occurrence with respect to any of the Contractor's owned, hired, and non-owned vehicles assigned to or used in performance of the Contractor's work or services under this Contract.

6.2.3   Workers' Compensation:

Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Contractor's employees engaged in the performance of the work or services under this Contract; and Employer's Liability insurance of not less than $100,000 for each accident, $100,000 disease for each employee, and $500,000 disease policy limit.

Contractor waives all rights against County and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the Workers' Compensation and Employer's Liability or commercial umbrella liability insurance obtained by Contractor pursuant to this Contract.

6.2.4   Certificates of Insurance.

      6.2.4.1   Prior to commencing work or services under this Contract, Contractor shall have insurance in effect as required by the Contract in the form provided by the County, issued by Contractor's insurer(s), as evidence that policies providing the required coverage, conditions and limits required by this Contract are in full force and effect. Such certificates shall be made available to the County upon 48 hours notice. **BY SIGNING THE AGREEMENT PAGE THE CONTRACTOR AGREES TO THIS REQUIREMENT AND FAILURE TO MEET THIS REQUIREMENT WILL RESULT IN CANCELLATION OF CONTRACT.**

      In the event any insurance policy (ies) required by this contract is (are) written on a "claims made" basis, coverage shall extend for two years past completion and acceptance of Contractor's work or services and as evidenced by annual Certificates of Insurance.

      If a policy does expire during the life of the Contract, a renewal certificate must be sent to County fifteen (15) days prior to the expiration date.

6.2.5   Cancellation and Expiration Notice.

Insurance required herein shall not be permitted to expire, be canceled, or materially changed without thirty (30) days prior written notice to the County.

6.3   WARRANTY OF SERVICES:

6.3.1   The Contractor warrants that all services provided hereunder be performed in a professional and workmanlike manner.

6.3.2   ANY AND ALL SOFTWARE MATERIALS, DOCUMENTATION, CONFIDENTIAL INFORMATION AND ANY OTHER MISCELLANEOUS TECHNOLOGY PROVIDED BY CONTRACTOR TO THE COUNTY ARE PROVIDED "AS IS" AND WITHOUT WARRANTY OF ANY KIND. EXCEPT AS OTHERWISE STATED IN THIS EXHIBIT, CONTRACTOR MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT.

6.4   PROCUREMENT CARD ORDERING:

The County may determine to use a MasterCard Procurement Card, to place and/or make payment for orders under the Contract.

6.5   INTERNET COMMUNICATIONS AND ORDERING:

The County may at its option use the Internet to communicate and to place orders under this Contract.

6.6   NOTICES:

All notices given pursuant to the terms of this Contract shall be addressed to:

For County:

Maricopa County Materials Management Department
Attn: Chief Procurement Officer
320 West Lincoln Street
Phoenix, Arizona 85003

For Contractor:

SumTotal Systems
Attn: Contracts Department
1808 North Shoreline Boulevard
Mountain View, CA 94043

6.7   PRICE ADJUSTMENTS:

Any requests for reasonable price adjustments must be submitted sixty (60) days prior to the Contract expiration date. Requests for adjustment in cost of labor and/or materials must be supported by appropriate documentation.

6.8   TERMINATION FOR CONVENIENCE:

The County reserves the right to terminate the Contract, in whole or in part at any time, when in the best interests of the County without penalty or recourse. Upon receipt of the written notice, the Contractor shall immediately stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the County. In the event of termination under this paragraph, all documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the County upon demand. The Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of the termination. If the County exercises its right to terminate under this section it will not be entitled to any refund for any support and maintenance services fees paid hereunder by the County.

6.9   TERMINATION FOR DEFAULT:

6.9.1   Term and Termination. The license term for the Software and Service Deliverables are perpetual, subject to termination for breach as set forth herein. We may terminate this Contract if you fail to materially comply with any of the terms and conditions hereof and you fail to correct such non-compliance within 30 days following written notice. Failure to make timely payments is a material breach of this Agreement. In addition to the rights reserved in the Contract, the County may terminate the Contract in whole or in part due to the failure of the Contractor to comply with any term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Contract. The Procurement Officer shall provide written notice of the termination and the reasons for it to the Contractor.

6.9.2   Effect Upon Termination. Upon termination of this Contract, all licenses granted herein shall cease and you shall discontinue all use of the Software and destroy any copies thereof in your possession or control. Any obligation of either party which accrued prior to termination, including without limitation any payment due and owing, and Sections 1 (Definitions), 5 (Ownership and Copyright), 6(c) (Warranty Disclaimer), 7 (Limitation of Liability), 8 (Confidential Information), and 9 (Miscellaneous) shall survive the termination of this Contract. Termination of this Contract shall also terminate all then current Statements of Work.

6.9.3   The Contractor shall continue to perform, in accordance with the requirements of the Contract up to the date of termination, as directed in the termination notice.

6.10   STATUTORY RIGHT OF CANCELLATION FOR CONFLICT OF INTEREST:

Notice is given that pursuant to A.R.S. §38-511 the County may cancel this Contract without penalty or further obligation within three years after execution of the contract, if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the County is at any time while the Contract or any extension of the Contract is in effect, an employee or agent of any other party to the Contract in any capacity or consultant to any other

party of the Contract with respect to the subject matter of the Contract. Additionally, pursuant to A.R.S §38-511 the County may recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the County from any other party to the contract arising as the result of the Contract.

6.11   OFFSET FOR DAMAGES:

In addition to all other remedies at law or equity, the County may offset from any money due to the Contractor any amounts Contractor owes to the County for damages resulting from breach or deficiencies in performance under this contract.

6.12   ADDITIONS/DELETIONS OF SERVICE

This Contract, and the services and products provided therein may not be modified except by written instrument signed by both parties and referring to the particular provisions to be modified.

6.13   RELATIONSHIPS:

In the performance of the services described herein, the Contractor shall act solely as an independent contractor, and nothing herein or implied herein shall at any time be construed as to create the relationship of employer and employee, partnership, principal and agent, or joint venture between the County and the Contractor.

6.14   ASSIGNMENTS:

This Contract (and any amendments or modifications thereto) and any rights or licenses granted to you hereunder, are non-transferable, non-exclusive, non-assignable, limited and personal to you. Neither party may assign its interest in this Agreement, including by operation of law or change of control, without the other party's prior written consent, which consent shall not be unreasonably withheld.   Notwithstanding the foregoing, we may transfer and/or assign some or all of this Agreement by operation of law due to a merger or change of control, without prior notice to you or your consent. However, the new entity must agree to all terms and conditions of this contract For the purposes of this Contract, "change of control" means consolidation, or any sale of all or substantially all of its assets or any other transaction in which more than 50% of its voting securities are transferred. This Contract will insure to the benefit of and be binding upon the party's successors and permitted assigns.   Unless otherwise specifically agreed to by the non-assigning party, no assignment by either party shall relieve the assignor from its obligations pursuant to this Contract. Any assignment in violation hereof shall be null and void.

6.15   AMENDMENTS:

All amendments to this Contract shall be in writing and approved/signed by both parties. Maricopa County Materials Management shall be responsible for approving all amendments for County.

6.16   RETENTION OF RECORDS:

The Contractor agrees to retain all financial books, records, and other documents relevant to this Contract for six (6) years after final payment or until after the resolution of any audit questions which could be more than six (6) years, whichever is longer. The County, County, Federal or State auditors and any other persons duly authorized by the Department shall have reasonable access to, and the right to examine, copy and make use of, said materials.

6.17   AUDIT DISALLOWANCES:

The County agrees to maintain accurate and detailed records of the number of named users licensed to use the software. The Contractor shall have the right to verify the number of named users licenses purchased under this Contract. The County shall provide at the request of the Contractor upon written notice a record of the number of named users licensed to use the software for compliance with this Contract.

If at any time, County determines that a cost for which payment has been made is a disallowed cost, such as overpayment, County shall notify the Contractor in writing of the disallowance. County shall also state the means of correction, which maybe but shall not be limited to adjustment of any future claim submitted by the Contractor by the amount of the disallowance, or to require repayment of the disallowed amount by the Contractor.

6.18   ALTERNATIVE DISPUTE RESOLUTION:

6.18.1   After the exhaustion of the administrative remedies provided in the Maricopa County Procurement Code, any contract dispute in this matter is subject to compulsory arbitration. Provided the parties participate in the arbitration in good faith, such arbitration is not binding and the parties are entitled to pursue the matter in state or federal court sitting in Maricopa County for a de novo determination on the law and facts. If the parties cannot agree on an arbitrator, each party will designate an arbitrator and those two arbitrators will agree on a third arbitrator. The three arbitrators will then serve as a panel to consider the arbitration. The parties will be equally responsible for the compensation for the arbitrator(s). The hearing, evidence, and procedure will be in accordance with Rule 74 of the Arizona Rules of Civil Procedure. Within ten (10) days of the completion of the hearing the arbitrator(s) shall:

6.18.1.1   Render a decision;

6.18.1.2   Notify the parties that the exhibits are available for retrieval; and

6.18.1.3   Notify the parties of the decision in writing (a letter to the parties or their counsel shall suffice).

6.18.2   Within ten (10) days of the notice of decision, either party may submit to the arbitrator(s) a proposed form of award or other final disposition, including any form of award for attorneys' fees and costs. Within five (5) days of receipt of the foregoing, the opposing party may file objections. Within ten (10) days of receipt of any objections, the arbitrator(s) shall pass upon the objections and prepare a signed award or other final disposition and mail copies to all parties or their counsel.

6.18.3   Any party which has appeared and participated in good faith in the arbitration proceedings may appeal from the award or other final disposition by filing an action in the state or federal court sitting in Maricopa County within twenty (20) days after date of the award or other final disposition. Unless such action is dismissed for failure to prosecute, such action will make the award or other final disposition of the arbitrator(s) a nullity.

6.19   VERIFICATION REGARDING COMPLIANCE WITH ARIZONA REVISED STATUTES §41-4401 AND FEDERAL IMMIGRATION LAWS AND REGULATIONS:

6.19.1   By entering into the Contract, the Contractor warrants compliance with the Immigration and Nationality Act (INA using e-verify) and all other federal immigration laws and regulations related to the immigration status of its employees and A.R.S. §23-214(A). The contractor shall obtain statements from its subcontractors certifying compliance and shall furnish the statements to the Procurement Officer upon request. These warranties shall remain in effect through the term of the Contract. The Contractor and its subcontractors shall also maintain Employment Eligibility Verification forms (I-9) as required by the Immigration Reform and Control Act of 1986, as amended from time to time, for all employees performing work under the Contract and verify employee compliance using the E-verify system and shall keep a record of the verification for the duration of the employee's employment or at least three years, whichever is longer. I-9 forms are available for download at USCIS.GOV.

6.19.2   The County retains the legal right to inspect contractor and subcontractor employee documents performing work under this Contract to verify compliance with paragraph 6.19.1 of this Section. Contractor and subcontractor shall be given reasonable notice of the

County's intent to inspect and shall make the documents available at the time and date specified. Should the County suspect or find that the Contractor or any of its subcontractors are not in compliance, the County will consider this a material breach of the contract.

6.20 VERIFICATION REGARDING COMPLIANCE WITH ARIZONA REVISED STATUTES §§35-391.06 AND 35-393.06 BUSINESS RELATIONS WITH SUDAN AND IRAN:

6.20.1 By entering into the Contract, the Contractor certifies it does not have scrutinized business operations in Sudan or Iran. The contractor shall obtain statements from its subcontractors certifying compliance and shall furnish the statements to the Procurement Officer upon request. These warranties shall remain in effect through the term of the Contract.

6.20.2 The County may request verification of compliance for any contractor or subcontractor performing work under the Contract. Should the County suspect or find that the Contractor or any of its subcontractors are not in compliance, the County may pursue any and all remedies allowed by law, including, but not limited to: suspension of work, termination of the Contract for default, and suspension and/or department of the Contractor. All costs necessary to verify compliance are the responsibility of the Contractor.

6.21 AVAILABILITY OF FUNDS:

6.21.1 The provisions of this Contract relating to payment for services shall become effective when funds assigned for the purpose of compensating the Contractor as herein provided are actually available to County for disbursement. The Director shall be the sole judge and authority in determining the availability of funds under this Contract. County shall keep the Contractor fully informed as to the availability of funds.

6.21.2 If any action is taken by any state agency, Federal department or any other agency or instrumentality to suspend, decrease, or terminate its fiscal obligations under, or in connection with, this Contract, County may amend, suspend, decrease, or terminate its obligations under, or in connection with, this Contract. In the event of termination, County shall be liable for payment only for services rendered prior to the effective date of the termination, provided that such services are performed in accordance with the provisions of this Contract. County shall give written notice of the effective date of any suspension, amendment, or termination under this Section, at least thirty (30) days in advance.

6.22 CONTRACT COMPLIANCE MONITORING

County shall monitor the Contractor's compliance with, and performance under, the terms and conditions of this Contract. The Contractor shall make available for inspection and/or copying by County, records and accounts reasonably related to the work performed or the services provided under this Contract.

6.22.1 If any of the services do not conform with Contract requirements, County may require the Contractor to perform the services again in conformity with Contract requirements. When the defects in services cannot be corrected by re-performance, County may:

6.22.1.1 Require the Contractor to take necessary action to ensure that future performance conforms to Contract requirements; and

6.22.1.2 Reduce the Contract price to reflect the reduced value of the services performed.

6.22.2 If the Contractor fails to promptly perform the services again or to take the necessary action to ensure future performance in conformity with Contract requirements, County may:

6.22.2.1 By Contract or otherwise, perform the services and charge to the Contractor any cost incurred by County that is directly related to the performance of such service; or

6.22.2.2 Terminate the Contract for default.

6.23 STRICT COMPLIANCE

Acceptance by County of performance not in strict compliance with the terms hereof shall not be deemed to waive the requirement of strict compliance for all future performance obligations. All changes in performance obligations under this Contract must be in writing, signed by both parties.

6.24 SEVERABILITY:

The invalidity, in whole or in part, of any provision of this Contract shall not void or affect the validity of any other provision of this Contract.

6.25 RIGHTS IN DATA:

All right, title and interest (including all intellectual property rights) in and to the Software, Service Deliverables, documentation and training materials we provide are owned by us or our suppliers and are protected by intellectual property laws, including copyright, patent, trademark, and/or trade secret laws. Any rights not expressly granted herein are reserved to Contractor.

All right, title and interest (including all intellectual property rights) in and to the County Materials, excluding the Embedded Technology incorporated therein, are owned by County and are protected by United States copyright laws and international treaty provisions.

6.26 INTEGRATION:

This Contract represents the entire and integrated agreement between the parties and supersedes all prior negotiations, proposals, communications, understandings, representations, or agreements, whether oral or written, express or implied.

6.27 GOVERNING LAW:

This Contract shall be governed by the laws of the state of Arizona. Venue for any actions or lawsuits involving this Contract will be in Maricopa County Superior Court or in the United States County Court for the County of Arizona, sitting in Phoenix, Arizona.

6.28 PRICES:

Contractor warrants that prices extended to County under this Contract are no higher than those paid by any other state or its political subdivision for these or similar services.

6.29 CONTRACTOR LICENSE REQUIREMENT:

6.29.1 The Respondent shall procure all permits, insurance, licenses and pay the charges and fees necessary and incidental to the lawful conduct of his/her business, and as necessary complete any required certification requirements, required by any and all governmental or non-governmental entities as mandated to maintain compliance with and in good standing for all permits and/or licenses. The Respondent shall keep fully informed of existing and future trade or industry requirements, Federal, State and Local laws, ordinances, and regulations which in any manner affect the fulfillment of a Contract and shall comply with the same. Contractor shall immediately notify both Materials Management and the using agency of any and all changes concerning permits, insurance or licenses.

6.29.2 Respondents furnishing finished products, materials or articles of merchandise that will require installation or attachment as part of the Contract, shall possess any licenses required. A Respondent is not relieved of its obligation to posses the required licenses by

subcontracting of the labor portion of the Contract. Respondents are advised to contact the Arizona Registrar of Contractors, Chief of Licensing, at (602) 542-1525 to ascertain licensing requirements for a particular contract. Respondents shall identify which license(s), if any, the Registrar of Contractors requires for performance of the Contract.

6.30   CERTIFICATION REGARDING DEBARMENT AND SUSPENSION

      6.30.1   The undersigned (authorized official signing for the Contractor) certifies to the best of his or her knowledge and belief, that the Contractor, defined as the primary participant in accordance with 45 CFR Part 76, and its principals:

           6.30.1.1   are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

           6.30.1.2   have not within 3-year period preceding this Contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statues or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

           6.30.1.3   are not presently indicted or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (2) of this certification; and

           6.30.1.4   have not within a 3-year period preceding this Contract had one or more public transaction (Federal, State or local) terminated for cause of default.

      6.30.2   Should the Contractor not be able to provide this certification, an explanation as to why should be attached to the Contact.

      6.30.3   The Contractor agrees to include, without modification, this clause in all lower tier covered transactions (i.e. transactions with subcontractors) and in all solicitations for lower tier covered transactions related to this Contract.

6.31   ORDER OF PRECEDENCE:

In the event of a conflict in the provisions of this Contract and Contractor's license agreement, the terms of this Contract shall prevail, except the Contractor's license agreement shall prevail where it pertains to the use of the Contractor's product.

6.32   INCORPORATION OF DOCUMENTS:

The following are to be attached to and made part of this Contract.

      6.32.1   Exhibit A, Pricing

      6.32.2   Exhibit B, Scope of Services

      6.32.3   Exhibit C, Software License Agreement; and

      6.32.4   Exhibit D, Contractor Travel and Per Diem Policy

IN WITNESS WHEREOF, this Contract is executed on the date set forth above.

CONTRACTOR:

_____

AUTHORIZED SIGNATURE

_____

PRINTED NAME AND TITLE

Betty Hung

Chief Financial Officer

_____

ADDRESS

20-DEC-2010

DATE

Approved
SumTotal
Finance

Approved
SumTotal
Legal

MARICOPA COUNTY:

_____

CHAIRMAN, BOARD OF SUPERVISORS

JAN 1 3 2011

DATE

ATTESTED:

_____

CLERK OF THE BOARD   091510

JAN 1 3 2011

DATE

APPROVED AS TO FORM:

_____

LEGAL COUNSEL

Jan 6 2011

DATE

EXHIBIT A
PRICING

SERIAL: 10077-SS
NIGP CODE: 20964
RESPONDENT NAME: SumTotal Systems
VENDOR NUMBER:
ADDRESS: 2850 NW 43rd St. Suite 200 Gainesville, FL 32606

P.O. ADDRESS:
TELEPHONE NUMBER: 352-264-2814
FACSIMILY NUMBER:
WEB SITE: www.sumtotalsystems.com

REPRESENTATIVE: Christy Urban
   curban@sumtotalsystems.com
REPRESENTATIVE E-MAIL:

	YES	NO	REBATE
WILL ALLOW OTHER GOVERNMENTAL ENTITIES TO PURCHASE FROM THIS CONTRACT:	[ ]	[X]	
WILL ACCEPT PROCUREMENT CARD FOR PAYMENT:	[ ]	[X]	
WILL OFFER REBATE (CASH OR CREDIT) FOR UTILIZING PROCUREMENT CARD:	[ ]	[X]	%

(Payment shall be made within 48 hours of utilizing the Purchasing Card)

PAYMENT TERMS: RESPONDENT IS REQUIRED TO PICK ONE OF THE FOLLOWING.

FAILURE TO CHOOSE PAYMENT TERMS WILL RESULT IN A DEFAULT TO NET 30 DAYS.

[ ] NET 10 DAYS	[ ] NET 45 DAYS	[ ] 1% 10 DAYS NET 30 DAYS
[ ] NET 15 DAYS	[ ] NET 60 DAYS	[ ] 2% 30 DAYS NET 31 DAYS
[ ] NET 20 DAYS	[ ] NET 90 DAYS	[ ] 1% 30 DAYS NET 31 DAYS
[X] NET 30 DAYS	[ ] 2% 10 DAYS NET 30 DAYS	[ ] 5% 30 DAYS NET 31 DAYS

Maintenance Renewals for P-LMS Enterprise based on 14,500 named users payable annually per above terms.

Year 1 –September 15, 2010 to September 14, 2011

Rental	$0USD
Hosted	$0USD
Annual Maintenance	$49,940.76 USD
Price $ 49,940.76	$49,940.76 USD

Year 2- September 15, 2011 to September 14, 2012

Rental	$0USD
Hosted	$0USD
Annual Maintenance	$53,436.62 USD
Price $ 53,436.62	$53,436.62 USD

Year 3 –September 15, 2012 to September 14, 2013

Rental	$0USD
Hosted	$0USD
Annual Maintenance	$57,177.18 USD
Price $ 57,177.18	$57,177.18 USD

Price for 3 years combined Totals $ 160,554.56 USD

EXHIBIT B
SCOPE OF SERVICES

This Exhibit sets forth the additional terms and conditions under which we will provide customer maintenance services in connection with the Software licensed to you pursuant to this Contract.

Customer Maintenance Contact Information:

SumTotal Systems Maintenance Web Site: **www.sumtotalsystems.com/support** (Note: Follow the instructions for submitting a technical issue or question to SumTotal Systems.)

Telephone Maintenance Numbers: **877-TOTALCS or 877-868-2527 or 425-637-1673**

The contact information above is current as of the date of this Agreement. We reserve the right to change our contact information from time to time upon notice to the Designated Contacts.

C1.   Additional Definitions.

(a)   "Designated Contacts" means the individuals designated by you and agreed to by us who are authorized to contact our customer maintenance staff and who will coordinate all of your Error submissions and maintenance requests.

(b)   "Error" shall mean a reproducible defect in the Software when operated on a Supported Environment, which causes the Software not to operate substantially in accordance with our published documentation.

(c)   "Error Correction" means a modification or patch that brings the Software into substantial conformance with our published documentation, or a procedure, routine or other information that enables you to avoid the practical adverse effect of an Error.

(d)   "Instance" means one or more SumTotal web application servers.

(e)   "Maintenance Release" means an update to an existing version of the Software containing Error Corrections or minor functionality enhancements. A Maintenance Release is designated as a numbered service pack for the current version, with no change in the version number.

(f)   "New Version Release" means a new version of the Software containing new features or enhancements to functionality. A New Version Release is designated by an increase in the version number. e.g. from 2.5 to 2.6 or 3.0. "New Version Release" only includes releases of the Software in a language included in your License Configuration.

(g)   "Primary Instance" means an Instance in your production environment containing your live training records.

(h)   "Secondary Instance" means an Instance in your testing environment used for testing or staging of your data.

(i)   "Supported Environment" means a hardware, operating system and database platform meeting the minimum system configuration requirements for the proper use and operation of the Software as set forth in our published documentation.

(j)   "Maintenance Term" means any period during which you are entitled to receive maintenance hereunder, including any renewals or extensions thereof.

C2.   Maintenance Services.

(a)   Standard Maintenance Provided. During each Maintenance Term, we will provide the following maintenance, subject to the procedures and limitations described herein: (i) clarifying and assisting in the operation of the features and functions of the Software; (ii) clarifying our published documentation; (iii) assisting in identifying and verifying the causes of suspected Errors; and (iv) providing Error Corrections. Such maintenance will be provided for the Primary Instance and Secondary Instance. During each Maintenance Term, you will have access to our online Customer Productivity Center ("CPC") located at www.sumtotalsystems.com. The CPC provides you with

access to online learning, knowledge documentation, and tools that enable you to enhance your knowledge of the Software.

(b) Self Help Maintenance Resources. You agree that the users of the Software will first attempt to answer any questions or resolve any issues with respect to the operation of the Software by using the following self help resources: (i) the Help function of the Software and (ii) our customer maintenance web site.

(c) Contacting Customer Maintenance. If you are unable to resolve an issue or question with respect to the Software using the self help resources described above, the Designated Contacts may contact a custover maintenance representative to receive maintenance using one of methods described below. We will provide maintenance only in English and only to the Designated Contacts. Any communication between the Designated Contacts and a customer maintenance representative must be in English. We will not provide maintenance to end users of the Software or to any person other than the Designated Contacts.

(i) Telephone Hot Line. We will provide telephone maintenance to the Designated Contacts between the hours of 8:00 a.m. to 8:00 p.m. Eastern Time Monday through Friday, excluding SumTotal Systems holidays (the "Maintenance Hours"). We will provide you with a list of SumTotal Systems holidays and any reduced maintenance hours on those holidays upon request. If you have purchased optional Extended Maintenance, we will provide additional telephone maintenance outside the Maintenance Hours 24 hours per day during weekdays for all severity level Errors and 24 hours per day, seven days per week, including SumTotal Systems holidays ("Extended Maintenance Hours") for Severity 1 Errors, as set forth in Table C1.

(ii) Web Email Template. We will use commercially reasonable efforts to provide an acknowledgement to web email sent to "http://www.sumtotalsystems.com/support" within eight (8) business hours after we receive the email.

(d) Error Correction. When you report an Error to us you should include a detailed description of the Error and the severity level determined in accordance with Section C2(e) below. When we receive notice of an Error, we will assign a problem tracking number to be included in all correspondence between you and us related to the Error and after our e-mail acknowledgement described in Section C2(c)(ii) we will provide a response in accordance with the severity levels and response times identified in Section C2(e). Thereafter, we will use commercially reasonable efforts to provide an Error Correction. The Error Correction may require that you install the latest Maintenance Release for the supported version of the Software on which you reported the Error. An Error Correction may require multiple contacts and off-line research. The Error Correction, when completed, may be provided in the form of a Software patch consisting of sufficient programming and operating instructions to implement the Error Correction, which will be provided to you via email, download or other electronic means.

(e) Response Times. Our response to an Error depends on the severity of the Error and the level of maintenance purchased by you, as determined by Table C1. For each level of severity, our customer maintenance representatives will use commercially reasonable efforts to respond, during the Maintenance Hours, within the times set forth in Table C1. Response time is the time from our receipt of notice of the Error until we contact the Designated Contact reporting the Error to begin resolution efforts, not the time to deliver an Error Correction. We will respond to an Error which arises in the Primary Instance at all severity levels set forth in Table C1. If an Error arises in the Secondary Instance, we will only respond according to the Severity 3 level response time, as set forth in Table C1.

(f) Additional Services with Premier Maintenance for the Primary Instance and Secondary Instance. If you have purchased Premier Maintenance, we will provide you with the following additional services for the Primary Instance and Secondary Instance: (i) a technical account manager responsible for proactively managing your maintenance issues during the Maintenance Hours; (ii) an annual one-day visit by the technical account manager to your location on a mutually-agreed date (travel and expenses not included); (iii) monthly usage reports detailing maintenance activity; (iv) review of relevant error corrections delivered to our customer base; and (v) accelerated response times.

(g) Exclusions from Maintenance Program. We are not responsible or liable for causes external to the Software, including but not limited to: (i) your failure to incorporate Maintenance Releases or New Version Releases; (ii) installation of the Software or any New Version Releases not in accordance with the documentation provided with the Software or New Version Releases; (iii) your use of the Software with any software or hardware other than the Supported Environment; (iv) problems resulting from use of the Software in a manner not permitted pursuant to your license; (v) modifications, alterations, or additions to the Software by parties other than us (including without limitation, modifications, alterations, or additions to the Software made by you); or (vi) damage from any source other than us including but not limited to water, humidity, fire, power surges, computer viruses, and accidents ("Excluded Services"). Any maintenance or services required to fix the Excluded Services will be billed to you on a time-and-materials basis in accordance with our then current rates. Such services shall be set forth on a mutually agreed upon Statement of Work and provided to you pursuant to Exhibit B. Unless we are hosting the Software at our data center, this maintenance program does not include maintenance in connection with or correcting Errors arising out of or related to a database management server or a web server or any other third party component that is used in

conjunction with the Software. We may, but are not required to, provide Error Corrections for such Errors at our then current time and materials rates. Maintenance does not include Software installation, configuration or services provided on-site at your location. If we are required or requested to travel to your facilities, any services will be provided at then current time and materials rates and you will reimburse us for all reasonable travel expenses, including meals and lodging. Maintenance does not include problems or errors in modifications to the Software we provide as a Service Deliverables pursuant to Exhibit B. Service Deliverables are provided with a warranty as set forth in Section 7(b) of this Agreement. We are not responsible for restoring lost data or damage to your data base that result from your actions. If you desire to purchase upgrade services or other professional services from us outside the scope of the maintenance in this Exhibit C, then we will provide such professional services to you for a charge as set forth in a mutually agreed Statement of Work pursuant to Exhibit B.

C3.   Customer Responsibilities.

(a)   Supported Environment and Operations. You are responsible for undertaking the proper supervision, control and management of your use of the Software including, but not limited to: (i) providing, maintaining and assuring proper configuration of the Supported Environment; (ii) following industry standard procedures for the security of data, accuracy of input and output, and back-up plans, including restart and recovery in the event of hardware or software error or malfunction; and (iii) maintaining a procedure external to the Software for reconstruction of lost or altered files, data and programs. This Section will not apply to you if we are hosting the Software at our data center.

(b)   Assistance in Providing Maintenance. You will provide reasonable assistance to us in determining and resolving Errors you report. Error determination activities may include performing network traces, capturing error messages, collecting configuration information and other similar activities to allow us to reproduce the Error. Resolution activities may include access to your personnel and/or remote access to the Supported Environment. You agree to allow us to use remote access tools, with the participation and under the supervision of a Designated Contact, to access the Software in the Supported Environment and modify its configuration as part of our Error determination and resolution activities. We may not be able to provide you with an Error Correction without such remote access. You are responsible for performing activities to implement Error Corrections we provide and for responding in a timely manner to requests for information by our customer maintenance staff. Error Corrections may include changing, installing or reinstalling new or existing versions of web browser software or new components, or modifying processes. Any information you provide us in connection with the maintenance process that you designate as confidential will be used only to resolve reported Errors, will not be disclosed to anyone other than our personnel involved in resolving the Error. As part of our Error resolution process, information you provide to us may be made available to our employees in foreign countries, unless you notify us otherwise in writing when providing us with such information.

(c)   Designation of Maintenance Contacts. You will designate up to the number of individuals specified in this Agreement as the Designated Contacts for receiving maintenance hereunder and notify customer maintenance of the Designated Contacts. You may change the Designated Contacts by notifying customer maintenance, but may not have more than the number of Designated Contacts set forth above at any one time. Each Designated Contact may not be changed more than once in a 30-day period.

(d)   Training. You are responsible for proper training of the Designated Contacts and all other appropriate personnel in the operation and use of the Software and the Supported Environment.

C4.   New Releases of the Software.

(a)   Maintenance Releases Provided with Maintenance Services. If and when available, we will provide to you any Maintenance Releases and New Version Releases that we make generally available to customers who have purchased maintenance during the Maintenance Term at no additional charge. Any Maintenance Release or New Version Releases are part of the Software and subject to the terms and conditions of this Agreement. The designation of a Software release as a Maintenance Release or a New Version Release will be made by us in our reasonable discretion.

(b)   Maintenance of Prior Releases. We will provide maintenance as described herein for the most current Maintenance Releases made with respect to the current New Version Release and the last two New Version Releases immediately preceding that release.

(c)   Installation and Configuration of New Releases. Maintenance does not include the installation or configuration of any Maintenance Releases or New Version Releases. Any services to be provided in connection with the installation or configuration of Maintenance Releases or New Version Releases will be provided for a mutually agreed fee as a Service Deliverables pursuant to Exhibit B. New Version Releases may have significant changes from current versions and it is strongly recommended that we provide the services to install New Version Releases to ensure our ability to continue to provide maintenance and Error Corrections. We will not correct Errors arising out of or related to installation or configuration of the Software or any New Version Releases by any party other than SumTotal Systems.

(d)   Migration of Customizations and/or Modifications.   If you have customized and/or modified Software, maintenance does not include migrating your customizations and/or modifications to any Maintenance Release or New Version Release, unless otherwise provided under the Statement of Work pursuant to which we provided such customizations and/or modifications. Any services to be provided in connection with the migration of customizations and/or modifications to Maintenance Releases or New Version Releases will be provided for a mutually agreed fee as a Service Deliverables pursuant to Exhibit B.

C5.   Source Code Escrow.

(a)   Source Code Option. We will maintain the source code of the supported versions of the Software (determined in accordance with Section C4(b)) in an escrow account with Iron Mountain ("Iron Mountain") having the release conditions described below (the "Escrow Account"). You may elect, at your expense, to be added as an additional beneficiary of the Escrow Account at any time during the Maintenance Term by providing us written notice of your election of this option. If you elect to be added as a beneficiary of the Escrow Account, you will be invoiced directly by Iron Mountain for the fees to add and maintain you as a beneficiary. We reserve the right to use a reputable third-party commercial escrow agent other than Iron Mountain, provided that the release conditions are as set forth in this Agreement.

(b)   Release Conditions. If you elect the source code escrow option, you will be permitted to access and use the source code to maintain the Software components and versions licensed by you if any one of the following events occurs and remains uncorrected for more than 30 days during a Maintenance Term: (i) we have been adjudged to be bankrupt by a court of competent jurisdiction and there has been an entry of an order for relief under Title 11 of the United States Code; (ii) we have made a general assignment for the benefit of creditors; (iii) a general receiver or trustee in bankruptcy has been appointed for our business or property; or (iv) we take action under any state insolvency or similar law for the purpose of our bankruptcy, reorganization, or liquidation.

(c)   Right to Use Following Release. If the source code is released to you, you may only use the source code for the sole purpose of supporting and maintaining the Software licensed to you in accordance with this Contract. You are obligated to maintain the confidentiality of the released source code and any materials which may accompany it.

C6.   Maintenance Fees.

Annual maintenance fees for any Maintenance Term are based on your then current License Configuration. You will be invoiced for the maintenance fees for the initial Maintenance Term upon execution of this Contract and, subject to Exhibit A.

Table C1

Severity Level	Severity Level Description	Response Time Targets		
		Standard	Extended	Premier
Severity 1	All or most of the Software is inaccessible or unresponsive, e.g. the system has crashed and will not recover.	Time to respond is 1 hour, during Support Hours.	Time to respond is 1 hour.	Time to respond is 1 hour, during Support Hours.
Severity 2	A major feature of the Software is not functional, resulting in a critical impact to a majority of the user community. There is not an available workaround.	Time to respond is 4 hours during Support Hours.	Time to respond is 4 hours during Support Hours.	Time to respond is 1 hour during Support Hours.
Severity 3	Incorrect behavior of the Software, cosmetic problem, any usage question, or functionality not available but there is either an available workaround or the impact has an effect on a minority of the user community.	Time to respond is 1 business day during Support Hours.	Time to respond is 1 business day during Extended Support Hours.	Time to respond is 1 hour during Support Hours.

EXHIBIT C
SOFTWARE LICENSE AGREEMENT

1.   **Definitions.** Capitalized terms shall be defined as set forth below, or elsewhere in this Contract.

(a)   "Customer Materials" means any data or materials, not provided by us or our suppliers, that are used in connection with the Software or Service Deliverables, such as technical information and functional specifications, user data, logos, photographs, compilations of facts, artwork, animations, video or audio files, or source materials for any of the foregoing.

(b)   "Embedded Technology" means any templates, forms, navigation controls, software code objects, components or other elements of the Software that are embedded in Customer Materials.

(c)   " Initi al L ic ens e Co nf igur at io n" means your License Configuration as of the Effective Date and set forth in Exhibit A of this Contract.

(d)   "License Configuration" means the particular components, optional modules and languages of the Software licensed hereunder and the number of Named Users licensed to access or use each such component or module of the Software pursuant to this Contract.

(e)   "Named User" means Named User for Non-Total Performance Software or Named User for Total Performance Software, as applicable.

(f)   "Named User for Non-Total Performance Software" means any individual for whom there is a user login account permitting such individual to access and use a component of the Software.

(g)   "Named User for Total Performance Software" means any individual for whom employee and other associated data pertaining to the modules is stored in the database.

(h)   "Service Deliverables" means the items to be delivered to you in connection with services we perform pursuant to Exhibit B, such as consulting reports, on-site training, Software integration work or Software modifications, but does not include the Software licensed hereunder.

(i)   "Software" means those components of our proprietary SumTotal software in the languages licensed by you hereunder as set forth in the License Configuration, including Maintenance Releases or New Version Releases, provided pursuant to Exhibit C or separately purchased by you.

2.   **Delivery of Software.**

We will electronically ship you the Software that you license under this Contract. The Software will be accepted by you upon our electronic shipment of the Software. Your acceptance of delivery under this Section 2 will not affect the warranty described in Section 7.

3.   **Software Licenses.**

(a)   License Grant. We hereby grant you, subject to the terms and conditions of this Contract, a non-exclusive, non-transferable, non-assignable perpetual right and license, without right of sublicense, to (i) install the Software and Service Deliverables in machine-readable object code format on an unlimited number of servers owned or leased by you or by a third party hosting service (or by us if we are hosting the Software and Service Deliverable) and maintained for access solely by you and (ii) permit the Software to be accessed or used as provided herein by no more than the number of Named Users permitted by the License Configuration. You may make a reasonable number of copies of the Software solely for archival and back up purposes.

You warrant that you are authorized to bind, and by virtue of its execution hereof, binds Named Users to the terms and conditions of this Contract as if the Named Users were you. Named Users hereby assume all of your obligations under this Contract.   You shall indemnify, defend, and hold harmless SumTotal and its respective officers, directors, employees, agents, successors, and permitted assigns from and against any damages sustained by us due to the breach of the foregoing warranty by you.   You shall guarantee that all Named Users will assume and abide by of all of your obligations under this Contract.   You shall be jointly and severally liable for any damages sustained by SumTotal due to your breach of the foregoing warranty and guaranty.

(b)   Management of Named Users. Each individual permitted to access or use a component of the Software must be assigned a user login account with a unique user identification and password and will be

considered a Named User of that component for purposes of the License Configuration. You may not permit more than one person to access or use a single login account or unique user identification and password to access or use the Software or otherwise share login accounts, user identifications or passwords. If you deactivate Named Users, you may maintain records in the database for such individuals, but you may not maintain login accounts for such individuals or otherwise permit them to access or use the Software. You may not deactivate a Named User's access to or use of the Software and assign such access or use of another individual, except that the access or use by a Named User: (i) who is no longer employed or engaged by you, (ii) who has been transferred to a division that does not access or use the Software or (iii) that has terminated the relationship with you, whether voluntarily or involuntarily, with you, may be deactivated by you and reassigned to another individual, who then shall be a Named User. In no event shall the total number of individuals that you allow to access or use the Software exceed the number of Named Users licensed hereunder.

        (c)   <u>Commercial Use</u>. You may permit the Software to be accessed and used only to (i) develop Customer Materials; (ii) deliver training to your employees, consultants, contractors, suppliers, distributors, resellers and customers; and/or (iii) process and manage data related to such training. You may charge a fee for any training delivered or managed using the Software. You may not use the Software to deliver training or manage data on behalf of any other organization, whether or not you are paid a fee for processing or managing such data. You may not use the Software to provide software or content development services to third parties.

        (d)   <u>License Configuration</u>. You shall upgrade to a larger number of licensed Named Users if the number of individual persons who will access or use the Software exceeds the number of Named Users permitted by your then current License Configuration. You may elect to license additional Software components, optional modules or languages, or add Named Users as agreed to by us in a written amendment signed by both parties, pursuant to Section 12(b) of this Contract.

        (e)   <u>Restrictions on Use</u>. You may not: (i) use, copy, modify, translate, merge or create derivative works of the Software, Service Deliverables, documentation or training materials except as expressly provided in this Contract; (ii) disable or circumvent any licensing control feature in the Software or Service Deliverables; (iii) reverse-engineer, disassemble, or decompile the Software or Service Deliverables or otherwise attempt to access or determine its underlying source code, underlying ideas, underlying user interface techniques or algorithms, or permit any such actions; (iv) distribute, lend, sublicense, rent or lease all or any portion of the Software or Service Deliverables or use the Software or Service Deliverables on a service bureau or time-share basis or as an application service provider; (v) provide access to or enable use of the Software or Service Deliverables by any individual other than a Named User, (vi) disclose the results of any benchmarking of the Software or Service Deliverables (whether or not obtained with SumTotal's assistance) to third parties; (vii) use the Software or Service Deliverables to develop or enhance any product that competes, directly or indirectly, with the Software or Service Deliverables; (viii) remove the copyright, trademark, or any other proprietary rights or notices included within the log in screen of the Software or Service Deliverables and on and in the documentation and training materials or (ix) use the Software or Service Deliverables in a manner that would violate any law applicable to you.

4.   Maintenance and Other Services.

        (a)   <u>Customer Maintenance</u>. During each Maintenance Term, we will provide customer maintenance services for the Software in accordance with the additional terms and conditions in Exhibit B.

5.   Ownership and Copyright.

        (a)   <u>Software and Service Deliverables</u>. All right, title and interest (including all intellectual property rights) in and to the Software, Service Deliverables, documentation and training materials we provide are owned by us or our suppliers and are protected by intellectual property laws, including copyright, patent, trademark, and/or trade secret laws. Any rights not expressly granted herein are reserved to us.

        (b)   <u>Customer Materials</u>. Subject to Section 6(a), all right, title and interest (including all intellectual property rights) in and to the Customer Materials, excluding the Embedded Technology incorporated therein, are owned by you or your suppliers and are protected by United States copyright laws and international treaty provisions

6.   Warranty.

        (a)   <u>Limited Warranty on Initial License Configuration</u>. For a period of 90 days following the Effective Date ("Software Warranty Period"), we warrant that the Initial License Configuration, as provided by us during the Software Warranty Period, will in all material respects conform to and perform in accordance with our published documentation that comes with the Initial License Configuration. You must report any breach of the foregoing warranty to us in writing pursuant to Section 12(e) of this Contract within the Software Warranty Period. Your exclusive remedy for a breach of this warranty is the correction of any material reproducible nonconformity in the Software licensed under the initial License Configuration so that it conforms to this warranty. If we determine that we

are unable to correct the Software licensed under the initial License Configuration after using commercially reasonable efforts to do so, then our sole and exclusive obligation shall be to refund the fees actually paid for such Software licensed under the initial License Configuration provided that you discontinue all use of the Software licensed under the initial License Configuration and certify that you have done such and have destroyed all copies in your control.

(b)   Limited Warranty on Service Deliverables. For a period of 90 days following the delivery of a Service Deliverable ("Service Deliverable Warranty Period"), we warrant that the Service Deliverable, as provided by us during the Service Deliverable Warranty Period, will in all material respects conform to and perform in accordance with the mutually-agreed specifications, you must report any breach of the foregoing warranty to us in writing pursuant to Section 12(e) of this Contract within the Service Deliverable Warranty Period. Your exclusive remedy for a breach of this warranty is the correction of any material reproducible nonconformity in the Service Deliverable so that it conforms to this warranty. If we determine that we are unable to correct the Service Deliverable after using commercially reasonable efforts to do so, then our sole and exclusive obligation shall be to refund the fees actually paid for such Service Deliverable provided that you discontinue all use of the Service Deliverable and certify that you have done such and have destroyed all copies in your control.

(c)   Warranty Disclaimer. EXCEPT FOR THE WARRANTIES EXPRESSLY SET FORTH IN SECTION 7(a), and 7(b), OF THIS CONTRACT, THE SOFTWARE, (INCLUDING INITIAL LICENSE CONFIGURATION), PROFESSIONAL SERVICES, TRAINING SERVICES, SERVICE DELIVERABLES, MAINTENANCE SERVICES, AND HOSTING SERVICES ARE PROVIDED "AS IS" AND WE EXPRESSLY DISCLAIM ANY EXPRESS, IMPLIED OR STATUTORY WARRANTIES AND CONDITIONS (INCLUDING THOSE BY OUR SUPPLIERS), INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT OR QUIET ENJOYMENT, AS WELL AS ANY WARRANTIES THAT THE SOFTWARE (INCLUDING INITIAL LICENSE CONFIGURATION), PROFESSIONAL SERVICES, TRAINING SERVICES, SERVICE DELIVERABLES, MAINTENANCE SERVICES, AND HOSTING SERVICES WILL BE FREE OF INTERRUPTIONS OR ERRORS. SUMTOTAL SHALL NOT BE LIABLE FOR UNAUTHORIZED ACCESS TO SUMTOTAL'S OR CUSTOMER'S TRANSMISSION FACILITIES OR PREMISES EQUIPMENT OR FOR UNAUTHORIZED ACCESS TO OR ALTERATION, THEFT OR DESTRUCTION OF YOUR DATA FILES, PROGRAMS, PROCEDURES OR INFORMATION THROUGH ACCIDENT, FRAUDULENT MEANS OR DEVICES, OR ANY OTHER METHOD. Some jurisdictions do not allow limitations on how long an implied warranty or condition lasts, so the above limitation may not apply to you. THIS LIMITED WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS, AND YOU MAY HAVE OTHER RIGHTS WHICH VARY FROM JURISDICTION TO JURISDICTION.

7.   Limitation of Liability.

(a)   IN NO EVENT WILL WE OR OUR SUPPLIERS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES OR LOST PROFITS ARISING FROM, CONNECTED WITH, OR RELATED TO THIS CONTRACT, WHETHER SUCH LIABILITY IS FORESEEABLE, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR ARISES FROM ANY CLAIM BASED UPON CONTRACT, WARRANTY, TORT OR OTHERWISE. Some jurisdictions do not allow limitation or exclusion of incidental or consequential damages, so the above limitation or exclusion may not apply to you. THE LIMITATIONS SPECIFIED HEREIN WILL SURVIVE AND APPLY EVEN IF ANY LIMITED REMEDY SPECIFIED IN THIS CONTRACT IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

(b)   IN NO EVENT SHALL OUR AGGREGATE CUMULATIVE LIABILITY FOR ANY DAMAGES, DIRECT OR INDIRECT, ARISING FROM, IN CONNECTION WITH, OR RELATED TO THE SOFTWARE, OR ANY SERVICE DELIVERABLES EXCEED THE AMOUNT PAID HEREUNDER WITH RESPECT TO SUCH SOFTWARE OR SERVICE DELIVERABLES WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED UPON CONTRACT, WARRANTY, TORT OR OTHERWISE. NOTWITHSTANDING THE FOREGOING, OUR TOTAL LIABILITY ARISING FROM, IN CONNECTION WITH, OR RELATED TO THIS CONTRACT SHALL NOT EXCEED THE TOTAL AMOUNT RECEIVED BY US FROM YOU UNDER THIS CONTRACT. THE LIMITATIONS OF THIS SECTION 9(b) DO NOT APPLY TO OUR OBLIGATION OF INDEMNITY PURSUANT TO SECTION 8. WE HEREBY DISCLAIM, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ALL WARRANTIES BY OUR SUPPLIERS AND ALL LIABILITY BY SUPPLIERS FOR ANY DAMAGES, WHETHER DIRECT, INDIRECT, OR CONSEQUENTIAL, ARISING FROM, CONNECTED WITH, OR RELATED TO THE USE OF THE HOSTING SERVICES.

8.   Confidential Information.

(a) "Confidential Information" means (a) a party's proprietary technology or computer software in all versions and forms of expression, whether or not the same has been patented or the copyright thereto registered, is the subject of a pending patent or registration application, or forms the basis for a patentable invention (collectively the

"Proprietary Technology"); (b) manuals, notes, documentation, technical information, drawings, diagrams, specifications, formulas or know-how related to any of the Proprietary Technology; (c) information regarding current or proposed products, customers, contracts, business methods, financial data or marketing data, financial results and projections, company and market strategy, product roadmaps, product and competitive sales analysis and plans, product or marketing plans, pricing plans or structures, personnel and recruiting matters, and future releases; and (d) offers or proposals which are provided by a Discloser, including, but not limited to, the fees charged by Discloser and such Confidential Information is either (i) in tangible or other form and labeled "confidential" or the like, or (ii) in a non-tangible form, including, but not limited to, oral information and is followed up within two (2) weeks in a tangible form that is appropriately labeled.

(b)   A party receiving Confidential Information ("Recipient") of the other party ("Discloser") shall: (i) not disclose the Confidential Information to any third party at any time and Recipient shall limit disclosure of Confidential Information within its own organization to its employees or its legal, financial and accounting advisors having a need to know and who have agreed to be bound by the terms of this Contract; and (ii) protect the confidentiality of the Confidential Information with at least the same degree of care as Recipient uses to protect its own Confidential Information of a like nature, but no less than a reasonable degree of care. Recipient shall be entitled to disclose Confidential Information solely to the extent necessary to comply with a court order or as otherwise required by law or by a regulatory agency or government body, provided that Recipient shall first give notice to Discloser and make a reasonable effort to obtain a protective order to protect the confidentiality of the information. If such protective order is not obtained, Recipient agrees to disclose only that portion of the Confidential Information which it is legally required to disclose. Recipient shall immediately notify Discloser of any actual or suspected unauthorized disclosure of Confidential Information. Recipient shall not modify, reverse-engineer, decompile, create other works from, or dissemble any software programs contained in the Confidential Information without Discloser's prior written consent.

(c)   The obligations described in Section 11(b) imposes no obligation upon Recipient with respect to any Confidential Information which (a) is or becomes a matter of public knowledge through no fault of Recipient; (b) is rightfully received by Recipient from a third party without a duty of confidentiality to a third party by, or with the authorization of, Discloser; (c) is disclosed without a duty of confidentiality; or (d) is independently developed by Recipient. The burden of proving any of the above exemptions is on Recipient.

(d)   Upon the written request of Discloser, Recipient shall immediately destroy or return to Discloser, as requested by Discloser, all Confidential Information of Discloser in its possession, together with all records in any manner pertaining to any of Discloser's Confidential Information. Recipient shall also, upon the written request of Discloser, furnish Discloser with a certificate of an officer verifying that all of the foregoing have been destroyed or returned to Discloser.

(e)   The terms set forth in this section replace any prior non-disclosure Contract executed between the parties.

9.   Miscellaneous.

(a)   Entire Contract, Modifications, and Waivers. This Contract, including all Exhibits hereto, contains our entire Contract with respect to the subject matter hereof.   All Exhibits are incorporated into this Contract by reference, and all references to "this Contract" in any Exhibit include all other Exhibits hereto. This Contract may not be modified except by written instrument signed by both parties and referring to the particular provisions to be modified.   All terms, conditions, or provisions which may appear as pre-printed language or otherwise be inserted within any purchase order shall be of no force and effect notwithstanding the acceptance of such purchase order after the date of this Contract. If any provision of this Contract is declared invalid or unenforceable, then the court shall replace the invalid or unenforceable provision with a valid and enforceable provision that most accurately reflects the parties' intentions and the remaining provisions of this Contract shall remain in full force and effect.   Without limiting the generality of the foregoing, you agree that Section 9 will remain in effect even if Section 7 is found to be unenforceable in whole or in part. Failure by either party to enforce any provision of this Contract will not be deemed a waiver of future enforcement of that or any other provision. Wherever the term "including" is used, it shall mean "including, but not limited to". This Contract may be executed in one or more counterparts, each of which shall be deemed an original for all purposes, and together shall constitute one and the same Contract.

(b)   Headings, Advice of Counsel, and Drafting. Headings used in this Contract are provided for convenience only, and will not in any way affect the meaning or interpretation of each section. The parties acknowledge that they have been advised by counsel of their own choosing, played equal parts in negotiating this Contract and that its terms will be interpreted without any bias against one party as drafter.

EXHIBIT D
CONTRACTOR TRAVEL AND PER DIEM POLICY

1.0   All contract-related travel plans and arrangements shall be prior-approved by the County Contract Administrator.

2.0   Lodging, per diem and incidental expenses incurred in performance of Maricopa County/Special District (County) contracts shall be reimbursed based on current U.S. General Services Administration (GSA) domestic per diem rates for Phoenix, Arizona. Contractors must access the following internet site to determine rates (no exceptions): www.gsa.gov

    2.1   Additional incidental expenses (i.e., telephone, fax, internet and copying charges) shall not be reimbursed. They should be included in the contractor's hourly rate as an overhead charge.

    2.2   The County will not (under no circumstances) reimburse for Contractor guest lodging, per diem or incidentals.

3.0   Commercial air travel shall be reimbursed as follows:

    3.1   Coach airfare will be reimbursed by the County. Business class airfare may be allowed only when preapproved in writing by the County Contract Administrator as a result of the business need of the County when there is no lower fare available.

    3.2   The lowest direct flight airfare rate from the Contractors assigned duty post (pre-defined at the time of contract signing) will be reimbursed. Under no circumstances will the County reimburse for airfares related to transportation to or from an alternate site.

    3.3   The County will not (under no circumstances) reimburse for Contractor guest commercial air travel.

4.0   Rental vehicles may only be used if such use would result in an overall reduction in the total cost of the trip, not for the personal convenience of the traveler. Multiple vehicles for the same set of travelers for the same travel period will not be permitted without prior written approval by the County Contract Administrator.

    4.1   Purchase of comprehensive and collision liability insurance shall be at the expense of the contractor. The County will not reimburse contractor if the contractor chooses to purchase these coverage.

    4.2   Rental vehicles are restricted to sub-compact, compact or mid-size sedans unless a larger vehicle is necessary for cost efficiency due to the number of travelers. (NOTE: contractors shall obtain pre-approval in writing from the County Contract Administrator prior to rental of a larger vehicle.)

    4.3   County will reimburse for parking expenses if free, public parking is not available within a reasonable distance of the place of County business. All opportunities must be exhausted prior to securing parking that incurs costs for the County. Opportunities to be reviewed are the DASH; shuttles, etc. that can transport the contractor to and from County buildings with minimal costs.

    4.4   County will reimburse for the lowest rate, long-term uncovered (e.g. covered or enclosed parking will not be reimbursed) airport parking only if it is less expensive than shuttle service to and from the airport.

    4.5   The County will not (under no circumstances) reimburse the Contractor for guest vehicle rental(s) or other any transportation costs.

5.0   Contractor is responsible for all costs not directly related to the travel except those that have been pre-approved by the County Contract Administrator. These costs include (but not limited to) the following: in-

room movies, valet service, valet parking, laundry service, costs associated with storing luggage at a hotel, fuel costs associated with non-County activities, tips that exceed the per diem allowance, health club fees, and entertainment costs. Claims for unauthorized travel expenses will not be honored and are not reimbursable.

6.0   Travel and per diem expenses shall be capped at 15% of project price unless otherwise specified in individual contracts

SUMTOTAL SYSTEMS INC., 2850 NW 43RD ST. SUITE 200, GAINESVILLE, FL 32606

PRICING SHEET: NIGP CODE 2096401

Terms:	NET 30
Vendor Number:	20110000126 0
Telephone Number:	352/264-2800
Fax Number:	352/374-2257
Contact Person:	Christy Urban
E-mail Address:	Cuban@sumtotalsystems.com
Certificates of Insurance	Required
Contract Period:	To cover the period ending **September 14, 2013**